



Acquiring Minds Want To Know: Plagiarism: A Victim Speaks Out

By: Joyce Ogburn

No Abstract

Acquiring Minds Want to Know: Ownership of Intellectual Property in the Academic Environment

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This article is the third in a series dealing with intellectual property, technology, and information policies. It specifically addresses ownership of intellectual property in the academic environment, focusing on course materials, but providing commentary on other intellectual property.

The traditionally accepted concept of ownership of intellectual property by academic creators is being challenged as institutions discover there may be potential revenue to be derived from the creative efforts of its faculty and researchers. In part the shift in perspectives and policies may be attributed to changes in technology, such as the development of the Internet, and by recent changes in teaching initiatives, such as distance education. The process of producing research and instructional materials also has come to rely ever more on collaboration and significant use of local staff and resources, perhaps signaling that such creative efforts and products should not be solely credited to the traditional author. Products of research and instruction, thanks to the Internet, are also easily delivered to remote locations, and are increasingly easy to alter and adapt to new and different purposes.

Ownership of intellectual property is a component of the employer/employee contract and the laws that govern work for hire. Briefly, when works-made-for-hire are developed by regular employees of an institution, in general the employer owns the intellectual property rights. Independent contractors usually control their intellectual property, however, if they are commissioned specifically to work on a project or course and the work is designated a work-made-for-hire, the copyright remains with the employer that made the commission.

Faculty and other academic creators of intellectual property have been considered exempt from the model of work-made-for-hire, despite the fact that they are employees of an institution. They have retained their rights to in-

tellectual property such as course materials, books, articles, music compositions, and the like. The institutions have shared in the rights and profits from patents and trademarks, which have been viewed as requiring significant institutional resources to develop and which have a potential return on the institution's investment.

Institutions are re-opening the question of ownership for many reasons, mostly in relation to course materials. Advances in technology have enabled the merger of content-driven material with access and delivery means. Technology has been touted as making delivery of courses cheaper and more effective.

Additionally, the offering of distance education programs has been promoted as a means to reach a new community of students, to increase revenue and enrollments, and to present teaching and scholarship inexpensively. The allure of distance education has another basis: competition. Academic institutions are competing with each other for shrinking revenue, and also with corporations offering courses to students in many venues. The value of distance education is not universally accepted, but many academic institutions have plunged into this area. To survive in the modern, competitive world, institutions are "re-inventing" themselves, with the hope of attracting the older student returning to the work force, the worker being re-trained for a new career, or continuing education dollars.

Faculty and researchers, who have until now retained the rights on their creations, are concerned that any move they make toward using the Internet for the delivery or enhancement of their courses will result in a loss of their rights and control. They may perceive the threat as coming from users of the Internet, who may find course materials and

copy them for their own, unauthorized use, as well as from their own academic institution, which may take over the material to use it for other courses or in ways unanticipated by the creator. Creators have legitimate concerns that if their institution retains rights or control over the material, the institution either may: 1) dictate what is said, thus compromising academic freedom, 2) restrict the author's rights of re-use, 3) create derivative

works that may differ fundamentally from the original intention, or 4) subsequently license the work to a commercial venture that may also alter it in some profound way.

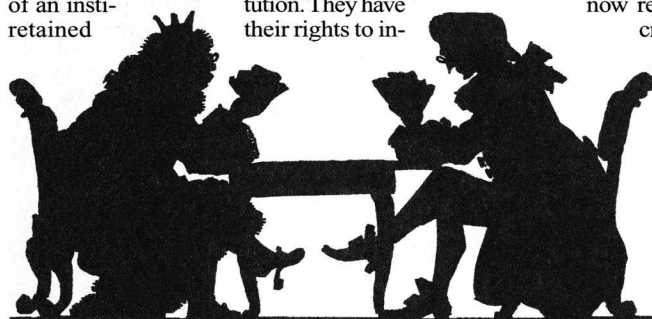
As the question of ownership is being reopened, staff who provide the technology, computer programs, graphics, research assistance, and other resources are generally left out of the discussion. Academic staff who may have spent

countless hours developing software, media, resources, graphics, and other tools may resent the faculty member who takes the result of collaborative works and moves it to another institution or receives remuneration for these efforts. The staff may receive an acknowledgment or thank you, but no compensation other than the salary paid by the institution.

Who then should own works that have been created with significant resources and investments by institutions, faculty, and staff?

The traditional creator's questions may be many in number. If an educator cannot own the course materials created at one institution, if he or she were to move to another institution, would it be permissible to re-create the course? How would one treat publications from a dissertation, usually started elsewhere, with resources utilized and supported by that other institution, but perhaps not published until the researcher is at an entirely different institution? What about works that build on previous research perhaps conducted at a different institution? And what about works created in collaboration with colleagues at another institution? In this case, what happens if the policies of two institutions conflict?

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performance of a job, why should the control remain in the hands of the author? If the work generates significant revenue, why can't the institution share in the profits? Where is the return on the investment of resources if the author takes the works to another place? If the work is in a form that can be delivered multiple times or asynchronously (such as Web pages or videotapes), why not take advantage of this fact?

Staff who assist in developing significant works may wonder why they receive no additional compensation, although they may have developed the software, process, or structure that make the production of the work possible. Does the author now own these supporting pieces as well? If the author and the institution are getting a part of the revenue, why can't the staff?

While there has been no all-encompassing solution proposed to these many issues associated with course materials, there has been related discussion on who should control the copyright of articles and books. On the retention of copyright by authors or publishers, some folk have argued that if the author doesn't assign the rights to the publisher, the employer should have some rights as the author does. Licensing has been suggested as a means to control shared rights. Effective rights management mechanisms need to be established. Is the solution to have an institution retain some rights while the creator also has portability? Can the institution help manage the

property for the creator, even after that person moves on to another institution?

The staff support question is a thorny one. I haven't seen any discussion on this issue and don't have a good solution to propose. Many service units of institutions don't charge for their services (there are exceptions, of course) and the billing for services may be outside of normal processes. And if billing does take place, who gets the money, the service unit or the staff? Or if there is some kind of licensing involved, how does the staff get compensated?

Obviously authors and creators want protection for their efforts, but also want to be able to share their creations with others. They also don't want to violate anyone else's rights. I doubt that many would take issue with their institution's desire to find cost effective

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Sidebar

Burk, Dan L. "Ownership of Electronic Course Materials in Higher Education." *CAUSE/EFFECT* Fall: 13-18, 1997. (HYPERLINK <http://www.cause.org/information-resources/ir-library/html/cem9734.html>; <http://www.cause.org/information-resources/ir-library/html/cem9734.html>).

This is a great summary of the issue of works-made-for-hire in the academic setting.

The May/June issue of *Academe* focused on "Technology and Intellectual Property: Who's in Control?" 84(3), 1998. Feature articles include: Gorman, Robert A. "Intellectual Property: The Rights of Faculty as Creators and Users." 14-18. (<http://www.aaup.org/gorman.htm>).

Heins, Marjorie. "Academic Freedom and the Internet." 19-21.

Scott, M. M. "Intellectual Property Rights: A Ticking Time Bomb in Academia." 22-26.

Cardenas, Karen. "Technology in Today's Classroom: It Slices and It Dices, but Does it Serve Us Well?" 27-29.

Guernsey, Lisa and Jeffrey R. Young. "Who Owns On-line Courses? Professors and Universities Anticipate Disputes Over the Earnings from Distance Learning." *Chronicle of Higher Education*, June 5, 1998. (<http://chronicle.com/che-data/articles.dir/art-44.dir/issue-39.dir/39a00101.htm>).

This report contains links to other related sites and stories.

Burdman, Pamela. "Internet Dilemma—Whose Class Is It? College Instructors Fear Losing Rights to Course Material Once It's Online." *San Francisco Chronicle* July 20, 1998. (<http://www.sfgate.com:80/cgi-bin/article.cgi?file=/chronicle/archive/1998/07/20/MN28413.DTL>).

Again, links are provided to related materials.

The institution may ask if the works are created as a part of the

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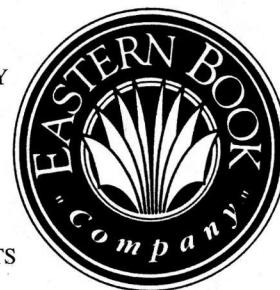
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tive means to deliver quality education to students. However, we may be replacing the clash of business goals of efficiency and effectiveness with intellectual goals of academic freedom, creativity, and the personal touch that invigorate research and teaching. Until there is a formula for fairness for compensation to all the parties and perhaps a different definition of the academic enterprise, there may not be a resolution.

Many universities have intellectual property policies that explicitly state the terms and conditions of ownership of intellectual property, including the terms of sharing royalties

on patents and trademarks. Some institutions are revisiting their policies in relation to course work and other intellectual property to debate who really should own materials created with institutional resources. Obviously any change in the relationship of the institution as employer to the faculty/staff as employee will undoubtedly have profound implications on important principles such as academic freedom.

Nowhere in this debate have I seen proposals on how authors, institutions, and publishers should determine the economic value of intellectual property. Are concerns over the risk of copying and misuse justified? Are online courses really effective and marketable? Are we going through a lot of turmoil for little gain?

Ironically this debate is developing in tandem with the call for authors to retain rights instead of giving them to publishers. Many of the same issues have arisen in this debate: rights management, rights in any and all formats, author or institution as owner, and licensing.

Finally, librarians need to be as cognizant as teaching faculty of their rights regarding the intellectual property they create. I'm not talking about just articles or books, but any material created in support of library programs, including but not limited to bibliographic instruction materials, Internet guides, policies, bibliographies, and Web pages. If you were to leave your institution, do you know whether you have the right to take your creations with you and use them at your next place of employment? 